



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Ralph Turnbull--Claim for Costs and Lost Profits

**File:** B-238399

**Date:** February 12, 1990

Ralph Turnbull, for the claimant.  
M. Penny Ahearn, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

There is no basis for recovery of bid preparation costs claimed in connection with canceled timber sale where claimant has not protested the propriety of the cancellation, since costs will be awarded only in conjunction with decision on the merits of a protest finding improper agency action.

### DECISION

Ralph Turnbull requests reimbursement of his bid preparation costs, lost profits, and other legal and administrative costs, in connection with the Forest Service's cancellation on environmental grounds of the Oak Grove Church Timber Sale in the Mark Twain National Forest, Missouri. We deny the claim.

Mr. Turnbull claims that as the apparent high bidder on the canceled sale, he is entitled to recover as damages the costs incurred in preparation for the sale, the anticipated profits he would have received had he been awarded a contract, and administrative and legal costs he incurred in pursuing this matter with the agency and Congress. The total amount of the claim is \$25,525.

Our authority to allow recovery of bid preparation costs generally is predicated upon a determination by our Office that a solicitation, proposed award or award of a contract

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does not comply with statute or regulation. See Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1989); see generally Data Management Servs., Inc., B-233345.2, Mar. 1, 1989, 89-1 CPD ¶ 214. Thus, an essential condition to a declaration that a claimant is entitled to an award of costs is a decision finding the protest has merit. See generally PathLab, P.A.--Request for Recon., B-236363.2, Sept. 19, 1989, 89-2 CPD ¶ 247. Here, Turnbull has not protested the cancellation of the timber sale to our Office and, as a result, we have no basis to question it. Accordingly, there is no basis for award of bid preparation costs.

Further, even where a bidder has been wrongfully denied award of a contract, there is no legal basis for allowing recovery of lost profits. Introl Corp., 64 Comp. Gen. 672 (1985), 85-2 CPD ¶ 35; Professional Carpet Serv.--Claim for Lost Profits, B-221808.2, Sept. 17, 1986, 86-2 CPD ¶ 311. Finally, since the additional administrative and legal costs claimed apparently were incurred prior to the cancellation, in challenging the delay of the sale before the agency and Congress, and are not related to the pursuit of a protest before our Office, they are not reimbursable. See generally Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376.

The claim is denied.

*Ronald Berger*  
*for*

James F. Hinchman  
General Counsel